



STATE OF WASHINGTON  
WASHINGTON STATE BOARD OF HEALTH  
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September 8, 2004

**TO:** Washington State Board of Health Members  
**FROM:** Carl Osaki, Tom Locke, and Ed Gray, WSBOH Members  
**RE:** **FOOD SERVICE RULE REVISION PROCESS CR-102 PUBLIC HEARING—CHAPTER 246-215 WAC**

**Summary**

In November 2001, the Board began the food service rule revision process. The stated goal was to develop regulations that are more consistent statewide, using the 2001 U.S. Food and Drug Administration (FDA) Food Code as a guide. The process has adhered to the proposed timeline, which calls for the Board to hold the public hearing on the proposed draft rule this month, with the goal of adopting an updated version of the food service rules by December 31, 2004.

Today Jennifer Tebaldi from the DOH Food Safety Program will briefly review the rule revision process. Ms. Tebaldi and Ned Therien will review major changes to Chapter 246-215 WAC in the proposed food service rule scheduled for public hearing today. Mr. Therien will also review public comment received on the proposed rule and describe how these comments are addressed within the proposed rule. (Please see DOH materials in Tab 8.) The Board will hear additional public comment during the public hearing on the proposed Chapter 246-215 WAC.

**Board Action Recommended**

Depending on testimony offered and the Board's own discussions, the Board may choose to consider, amend if necessary, and adopt the following motion:

*The Board adopts the revised Chapter 246-215 WAC as published in WSR 04-16-109.*

**Background**

The purpose of chapter 246-215 WAC is to establish State Board of Health standards for food service under RCW 43.20.050 to promote and protect the health, safety, and well being of the public and prevent the spread of disease by food (WAC 246-215-001). The food service rules adopted by the Board cover a wide range of activities including food preparation, protection from contamination, temperature control, cooking requirements, sanitary design of equipment, cleaning, worker hygiene, and pest control. The Board last revised its food service rules in 1992.

Local health jurisdiction staffs enforce State Board of Health food service rules [RCW 70.05.070(1)]. Local boards of health may adopt local rules and regulations that are more stringent than the State Board of Health rules [WAC 246-215-280, RCW 70.05.060(3)].

In November 2001, the Board filed a CR-101 to begin the rule revision process for the food service regulations. The stated goal was to develop regulations that are more consistent statewide, using the 2001 U.S. Food and Drug Administration (FDA) Food Code as a guide. The 2001 FDA Food Code contains model guidelines for regulating food service establishments, along with extensive references, public health reasons for the guidelines, and additional information. Forty-one states have adopted some version of the federal model code, and eight more states (including Washington) are actively considering adopting most of its provisions.

Input has been received from members of a “core workgroup,” participants on subcommittees formed to discuss specific issues, through e-mails and letters, and at public workshops held throughout the state. Within that process, the core workgroup reached consensus on some issues, such as to lower the food cold holding temperature. Other issues were not resolved by core workgroup consensus, such as whether or not potlucks advertised to the public should be regulated and when the rule should go into effect. DOH developed recommendations for these unresolved issues. DOH Food Safety Program staff members used input on the 2001 FDA Food Code and additional draft language, along with direction from Board rule sponsor Carl Osaki, to develop the food service rules proposed for adoption. (Please see DOH materials behind Tab 8.)

Engrossed Substitute House Bill 2325 went into law in 2002. The purpose of the law is to encourage food donation to charitable organizations while assuring safe food handling practices. The law directs the Board to promulgate rules for the safe receipt, preparation and handling of donated food by distributing organizations by December 31, 2004. The law directs DOH to establish recommended donor guidelines to educate the public about preparation and handling of food donated to charitable organizations for distribution to homeless and other needy people. It also directs DOH, in consultation with the Board, to develop educational materials containing these guidelines by December 31, 2004. The law also states that on request from a food donor or distributing organization, local health officers may grant variances to Chapter 246-215 when there is no known or expected health hazard. (Please see ESHB 2325 behind Tab 8.)

House Bill 1318, proposed by DOH and supported by the Board, went into law in summer 2003. It added section 145 to chapter 43.20 RCW: “The state board shall consider the most recent version of the United States Food and Drug Administration’s Food Code for the purpose of adopting rules for food service.” Because of this change, the rule adoption process will be streamlined—economic impact analyses are not needed for changes made to food service rules that are taken from the most recent version of the FDA Food Code, the 2001 version.

Because of concerns about the timeframe for revising chapter 246-215 WAC and the variability of food regulations in a few local health jurisdictions, the 2002 Legislature passed Engrossed Substitute Senate Bill 6588. ESSB 6588 would have given the Board sole rule-making authority to adopt food service rules for food service establishments, preempting local health jurisdictions’ current ability to set stricter food regulations. Although Governor Locke vetoed ESSB 6588, the bill’s December 2004 rule adoption date was incorporated into the food service rule revision timeframe. The Board may hear testimony from industry stakeholders who would prefer inclusion of local health jurisdiction preemption language in chapter 246-215 WAC. A bill that addresses this concern may be proposed in the future.